

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAVID L. STAHL)	
Claimant)	
VS.)	
)	Docket No. 229,115
MAC EQUIPMENT, INC.)	
Respondent)	
AND)	
)	
ZURICH INSURANCE COMPANY)	
Insurance Carrier)	

DAVID L. STAHL)	
Claimant)	
VS.)	
)	Docket No. 242,867
MAC EQUIPMENT, INC.)	
Respondent)	
AND)	
)	
ZURICH INSURANCE COMPANY and)	
TRAVELERS PROPERTY CASUALTY)	
Insurance Carriers)	

ORDER

The claimant appealed the August 30, 1999 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

Docket number 229,115 is a claim for a May 21, 1996 accident and resulting right knee injury. Docket number 242,867 is a claim for a series of accidents ending February 3, 1999, in which claimant alleges that as a result of the right knee injury he sustained numerous falls bruising his spinal cord and aggravating the preexisting stenosis in his neck.

The Judge denied claimant's request for benefits finding that claimant failed to prove that his neck condition was related to either an accident that occurred at work or the natural consequence of a work-related accident.

Claimant contends the Judge erred. He argues that he proved that his bruised spinal cord was a natural consequence of his May 1996 right knee injury as the neck injury was allegedly caused by his knee frequently giving way causing him to fall. Alternatively, he argues that he fell numerous times while at work and, therefore, his bruised spinal cord constitutes a separate compensable injury.

Conversely, the respondent and its insurance carriers contend that the alleged neck and spinal cord injuries are not compensable under the Workers Compensation Act. They first argue that claimant's spinal stenosis is a longstanding and progressive condition that naturally worsened causing claimant's current condition. Also, they argue that claimant's testimony regarding his alleged series of falls is not credible. In support of that argument, they cite the office notes from numerous doctors that do not contain any mention of the alleged falls. If claimant did fall, they argue that it is equally probable that the falls were caused by the effects of the spinal stenosis. Finally, they contend that any neck or spinal cord injury should be considered a new and separate accident, which did not occur at work, rather than a natural consequence of the right knee injury.

The only issue before the Board on this appeal is whether claimant has proven that it is more probably true than not that his alleged neck and spinal cord injuries are the natural consequence of his May 1996 work-related accident or the result of a later accident that arose out of and in the course of claimant's employment.

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. On May 21, 1996, Mr. Stahl injured his right knee while working for Mac Equipment, Inc. As a result of that accident, Mr. Stahl underwent knee surgery in October and December 1996. Before the May 1996 accident, Mr. Stahl had undergone two arthroscopies to the same knee.
2. Mr. Stahl's knee surgeon, Joseph E. Mumford, M.D., rated and provided him permanent work restrictions in June 1997, which was at a time that Mr. Stahl alleges that his right knee was giving way approximately twice each week causing him to fall to the ground. Mr. Stahl alleges a specific fall in December 1998 that occurred at work. After that fall, he contends that he gradually began experiencing symptoms of numbness in his hands and legs.
3. While recuperating from his two latest knee surgeries, Mr. Stahl saw Dr. Mumford numerous times between January 1997 and January 1999. Although there is a mention of the right knee giving way in the doctor's February 1997 office notes, that symptom does not

appear again in the doctor's notes until November 1998. The doctor's notes do not appear to contain any notation that Mr. Stahl's knee gave way causing him to fall. When Mr. Stahl saw Dr. Mumford in November 1998, he also told the doctor that his leg would shake and tremble when he exerted himself.

4. Mr. Stahl next saw Dr. Mumford in January 1999 with complaints of difficulty walking up and down stairs for the past several months. Again, the records contain no comment that Mr. Stahl was falling because of his knee giving way. At that visit, Dr. Mumford found that Mr. Stahl had a distinctly abnormal gait with a spastic component in both legs. Because of those findings, the doctor recommended that Mr. Stahl see neurologist Jonson Huang, M.D., for additional tests.

5. Dr. Huang's tests indicated that Mr. Stahl had bilateral leg weakness with spastic paraparesis. An MRI taken at that time showed spinal stenosis at C4-5 and C5-6. Dr. Huang then referred Mr. Stahl to neurosurgeon K. N. Arjunan, M.D., who performed a three-level decompressive cervical laminectomy on Mr. Stahl on February 11, 1999, to decrease the impingement on the spinal cord.

6. The parties deposed Dr. Arjunan. He found a bruise on Mr. Stahl's spinal cord near the fourth and fifth cervical vertebra. But he could neither date the bruise nor state that Mr. Stahl's alleged December 1998 fall caused it. Nevertheless, the doctor did state that the bruise was probably caused by some type of incident in which there was a sudden flexion, sudden extension, or axial loading to the neck.

7. At the request of Travelers, orthopedic surgeon Sergio Delgado, M.D., evaluated Mr. Stahl and reviewed his medical records. Contrary to Dr. Arjunan, Dr. Delgado indicated in his August 5, 1999 letter, that the changes on the spinal cord that Dr. Arjunan identified as a bruise could represent a fibrous reaction caused by the spinal stenosis. In arriving at that opinion, Dr. Delgado noted that Dr. Arjunan's surgical notes did not indicate that he found acute changes such as old blood or hemosiderin stains from recent bleeding around the spinal cord. Dr. Delgado also noted that Mr. Stahl lacked a history that he developed either neck pain or noticed progressive weakness in the lower extremities immediately after any of his alleged falls. Dr. Delgado concluded that Mr. Stahl's present spinal cord problems are the result of his progressively worsening spinal stenosis, which is a congenital abnormality unrelated to Mr. Stahl's work activities or alleged falls.

8. The Judge found that Mr. Stahl failed to prove that his neck problems were related to his work. Based upon the present record, the Appeals Board agrees. The medical records indicate it is more probably true than not that Mr. Stahl's spinal stenosis gradually progressively worsened causing pressure on the spinal cord. There does not appear to be a sudden worsening in signs or symptoms, which would support Mr. Stahl's argument that he bruised the spinal cord because of his knee giving way and falling. Further, the failure of Dr. Mumford's office notes to mention that Mr. Stahl was falling and striking the ground on a regular basis raises questions of whether Mr. Stahl's right knee was giving way making him fall or, if it were, whether it happened as frequently as represented.

CONCLUSIONS OF LAW

1. The May 21, 1996 accident involving Mr. Stahl's right knee arose out of and in the course of his employment with Mac Equipment. But Mr. Stahl has failed to prove that his spinal cord injury or the worsening of his spinal stenosis is related to the May 1996 accident or any other accident that occurred while working for Mac Equipment.
2. The Workers Compensation Act places the burden of proof on injured workers to establish their right to compensation.¹ And that burden is to persuade the trier of facts by a preponderance of the credible evidence that their position on an issue is more probably true than not when considering the whole record.²
3. Because Mr. Stahl has failed to prove that he either injured or aggravated his neck as the direct result of either the May 1996 accident or any other incident that occurred later at work, the request for benefits must be denied.
4. As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.³

WHEREFORE, the Appeals Board affirms the preliminary hearing Order dated August 30, 1999, entered by Judge Benedict.

IT IS SO ORDERED.

Dated this ____ day of November 1999.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Rex W. Henoch, Lenexa, KS
Bret C. Owen, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director

¹ K.S.A. 1998 Supp. 44-501(a).

² K.S.A. 1998 Supp. 44-508(g).

³ K.S.A. 1998 Supp. 44-534a(a)(2).